

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In re Application of)	
)	
BUSTOS MEDIA HOLDINGS, LLC	)	File No. BNPFT-20171212AAF
	)	Facility ID #201738
For a Construction Permit for)	
New FM Translator Station K260DK)	
Portland, Oregon)	
To: The Commission		

APPLICATION FOR REVIEW

Media Institute for Social Change (“MISC”), hereby submits this timely-filed¹ Application for Review (“Review”) of the letter decision² of the Media Bureau, dated October 15, 2018 (Ref 1800B3-ATS) (“Letter Decision”) denying MISC’s March 1, 2018 Petition for Reconsideration (“Reconsideration”) concerning the above-identified application of Bustos Media Holdings, LLC (“Bustos”) for a new FM translator station K260DK granted on February 1, 2018. Review is being sought warrants Commission consideration under §1.115(b)(2)(i) where the *Letter Decision* is in conflict with FCC precedent and policy.

The Commission should review and reverse the Bureau’s decision that MISC did not utilize proper protocol in predicted interference demonstration via §74.1204(f). Of lesser

¹ Per §1.104(b), §1.4(b).

² Letter to Michael Couzens, Esq. et al from Albert Shuldiner Chief, Audio Division, *In re: Bustos Media Holdings, LLC*. October 15, 2018.

importance, it is believed MISC's additional public interest stipulations were not gauged appropriately concerning Local Community Radio Act³ ("LCRA") precedent.

TABLE OF CONTENTS

I.	SUMMARY	3
II.	THE FCC DECLINED THE METHODOLOGY USED TO DEMONSTRATE PROPOSED INTERFERENCE WITHIN MISC'S PETITION WHILE IN THE PAST IT HAS ALLOWED USE OF THAT SAME METHODOLOGY.	4
III.	THE GRANT OF K260DK CONTRAVENES LCRA SECTION 5	9
IV.	CONCLUSION.	16
V.	CERTIFICATE OF SERVICE	18
VI.	ATTACHMENTS	19

I. SUMMARY.

On December 12, 2017 Bustos submitted a long form application for a cross-service FM translator proposing to rebroadcast KOOR (AM) Milwaukie, Oregon onto channel 260, in Portland, Oregon. MISC is the licensee of low power FM station KXRW-LP, Vancouver, Washington. KXRW-LP operates on channel 260 at a distance of 18.3 km away, co-channel to K260DK. The introduction of K260DK has induced a short-spacing arrangement under §73.807 for the LPFM facility. MISC filed Petition for Reconsideration of the K260DK construction permit grant because it proposes to interfere with established listenership of KXRW-LP.⁴ While

³ H.R. 6533 — 111th Congress: Local Community Radio Act of 2010.

⁴ §73.3580 requires applicants for construction permits for new FM translator stations to provide local notice in a newspaper of general circulation in the community to which the station is licensed after applying, which MISC did not see in any publication. The omission of public notice hampered knowledge of the 15-day Petition to Deny period. Petition of Reconsideration was filed instead after granting. In addition, for the Commission to consider a Petition for Reconsideration in the public interest despite not having participated in petitioning prior to a translator grant -- see *R&S Media*, 19 FCC Red 6300,

K260DK proposes no prohibited overlap of field strength contours with regard to §74.1204(a)(4), it does propose a situation that would cause interference to the regularly-used off-the-air signal of KXRW-LP, which is prohibited by §74.1204(f). Furthermore, there are public interest and signal engineering reasons that side with rescinding the permit. MISC provided extensive evidence of proposed listenership interference in the form of ten KXRW-LP listeners within the proposed translator 60 dBu contour. MISC primarily used Longley-Rice propagation to demonstrate this introduced interference. Bustos filed Opposition on March 14, 2018 contesting minor protocol issues associated with the Reconsideration. MISC filed a Reply on March 19, 2018 replying to those purported defects. On October 15, 2018 the Commission issued letter decision Ref. 1800B3-ATS which sided with MISC's grievance for the most part, but stated that the Longley-Rice propagation engineering exhibit did not suffice⁵ in fulfilling one of the four steps specified for interference demonstration.⁶ Furthermore, the Commission rejected that the translator did not comply with LCRA Section 5.⁷

MISC asserts that the Commission has permitted use of Longley-Rice concerning Section 74.1204(f) protocol in past instances. It would seem arbitrary and capricious to selectively deny MISC the use of that same process. Furthermore, the degree of engineering rigor with respect to providing "convincing evidence" per the minimum demonstration criteria⁸ has not been consistent with prior petitions, with MISC exceeding the quality of demonstration of some past-granted petitions. Within this latest *Letter Decision*, the judgement was thought to be

6302 (2004), *Aspen FM, Inc.*, 12 FCC Red 17852 (1997); *Letter to Gary Smithwick*, 28 FCC Red 8929 (2013).

⁵ *Letter Decision*, page 6. "We reject MTSC's use of Longley-Rice coverage area analysis to demonstrate predicted interference."

⁶ Protocol derived in *The Association of Community Education, Inc.*, 19 FCC Red 12682, 12685-86 (2004) ("ACE"). See numbered steps in p. 5 of this petition.

⁷ *Letter Decision*, page 7. "Finally, we reject MISC's argument that Section 5(2) of the LCRA requires us to dismiss the Permit Application."

⁸ *Supra* 6.

more stringent. Lastly, the Local Community Radio Act states that decisions between LPFM and translators usage should be “made based on the needs of the local community.”⁹ *Letter Decision* disagrees with MISC’s reasoning concerning the balance and usage of Portland secondary spectrum usage per LCRA. But the FCC nebulously substantiates its argument, veering from the FCC precedent on the matter. These are the questions central to this Review.

II. THE FCC DECLINED THE METHODOLOGY USED TO DEMONSTRATE PROPOSED INTERFERENCE WITHIN MISC’S PETITION WHILE IN THE PAST IT HAS ALLOWED USE OF THAT SAME METHODOLOGY.

Section 74.1204(f) of the Commission’s rules states:

An application for an FM translator station will not be accepted for filing even though the proposed operation would not involve overlap of field strength contours with any other station, as set forth in paragraph (a) of this section, if the predicted 1 mV/m field strength contour of the FM translator station will overlap a populated area already receiving a regularly used, off-the-air signal of any authorized co-channel, first, second or third adjacent channel broadcast station, including Class D (secondary) noncommercial educational FM stations and grant of the authorization will result in interference to the reception of such signal.

Within Reconsideration, MISC referenced the suggested route for demonstrating that interference. This includes a four-step approach from *The Association of Community Education, Inc.* (“ACE”):

To provide “convincing evidence” under Section 74.1204(f) that grant of the translator construction permit “will result in interference to the reception” of an existing radio station, an opponent must provide, at a minimum: (1) the name and specific address of each listener for which it claims credit; (2) some demonstration that the address of each purported listener falls within the 60 dBu contour of the proposed translator station; (3) some evidence, such as a declaration from each of the claimed listeners, that the person, in fact, listens to the specified radio station at the specified location; and (4) evidence that grant of the authorization will result in interference to the reception of the “desired” station at that location.¹⁰

⁹ LCRA Section 5(2).

¹⁰ *Letter Decision* page 6, referencing *The Association of Community Education, Inc.*, 19 FCC Red 12682, 12685-86 (2004) (“ACE”).

MISC diligently followed that protocol, providing ample maps within attachment that clearly embraced each of the four protocol steps.¹¹ Within *Letter Decision*, the FCC rejects MISC utilizing the Longley-Rice propagation method to demonstrate proposed translator interference to current Portland listeners of the KXRW-LP signal.¹² MISC believes this is a departure from FCC precedent.

MISC's demonstration was based upon the protocol determined in *ACE*.¹³ Since the aforementioned four-step procedure does not list any associated propagation methodology, MISC's demonstration has not deviated from any established protocol. From what MISC is aware of, Longley-Rice propagation has never been rejected concerning Section 74.1204(f) showings. Within the letter decision, the FCC substantiates its decision to reject the methodology based upon *Shaw Communications, Inc.*, where a translator was being contested because the reception of the input channel was contended to be terrain-blocked.¹⁴ The case did not involve Longley-Rice, or translator interference -- it was a debate over the protocol narrowly concerning Section 74.1231(b). That decision did reference *Letter to Lee Shubert, Esq.*, a case in which the application of Longley-Rice to a station for the purposes of assessing multiple ownership under §73.3555 was denied.¹⁵ It is believed these cases are not identical to the case at hand.

What is known is that the FCC has accepted the use of Longley-Rice in the past concerning Section 74.1204(f) decisions. On January 1, 2018 Hispanic United Broadcasting,

¹¹ Step 1: Attachment F; Step 2 Attachment C; Step 3: Attachment I; Step 4: Attachments E, G.

¹² *Supra* 5.

¹³ *Supra* 10.

¹⁴ *Shaw Communications, Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 5852, 5853, para. 5,

¹⁵ *Lee Shubert, Esq.*, Letter Order, 10 FCC Rcd 3159, 3160 (MMB 1995).

licensee of WRXW-LP, submitted a Petition to Deny against Unity Broadcast, LCC, regarding application BNPFT-20171206AAF for a new translator for Bithlo, Florida (Attachment C) (“Bithlo Petition”). Within its presentation demonstrating new interference per Section 74.1204(f), it utilizes a Longley-Rice propagation exhibit for the proposed translator coverage. The plot showed the varying signal strength of the proposed translator using Longley-Rice methodology in relation to the proposed three persons to receive interference and WRXW-LP. In the letter decision (Attachment D), the FCC then writes:

The Petition submitted documentation from three listeners, Roberto Consepcion, Lolli Charland, and Patricia Chavez, that certified and they are listeners of WRXW-LP and live, work or travel within the 60 dBu contour of proposed translator. Since the Petitioner has demonstrated that there are listeners within the proposed 60 dBu contour of proposed application for NEW (FM), the application is dismissed.

Accordingly, the Petition to Deny filed on January 2, 2018 by HUB IS HEREBY GRANTED, and application BNPFT-20171206AAF IS HEREBY DISMISSED. These actions is taken pursuant to 47 C.F.R. §0.283.¹⁶

In another case, on September 2, 2016 Bustos Media Holdings, licensee of KZZR (FM), submitted Petition for Reconsideration against Salem Media of Oregon, Inc. concerning modification of translator K232FM from Eaglemount, Washington to Portland, Oregon (Attachment E¹⁷) (“Eaglemount Petition”). Within its presentation to demonstrate new interference per Section 74.1204(f), Bustos utilizes a Longley-Rice propagation exhibit of the proposed translator. Exhibit G of their reconsideration simply provides a plot of the 70 dBu and 60 dBu Longley Rice coverage of KZZR within the proposed translator application 60 dBu contour. Within the letter decision regarding the contest (Attachment F), the FCC finds the demonstration appropriate, siding against the proposed translator:

¹⁶ *Letter to Unity Broadcasting LLC In Re:NEW(FM), Bithlo, FL.* regarding Petition to Deny BNPFT-20171206AAF, March 12, 2018.

¹⁷ Note: Exhibit E of the *Eaglemount Petition* was omitted within Attachment E because it was many pages of listener declarations that are not pertinent to this Application for Review. This was done to cut down PDF document size.

Here, Bustos has submitted documentation from listeners certifying that they are listeners of KZZR(FM) and that they live, work or travel within the 60 dBu contour of proposed Translator. Because we find that Bustos' engineering exhibit has demonstrated that there are listeners within the proposed 60 dBu contour of proposed Translator, we will rescind the grant of the Modification Application and dismiss it.¹⁸

It is unclear why the Commission has accepted Longley-Rice demonstrations from past contests, that did not opt to use the §73.313 method, and now it has decided to veer from that policy within the recent denial letter. It is also noted that it sided with Bustos Media Holdings when Bustos utilized Longley-Rice methodology in the Eaglemount Petition, and now the Commission sides against MISC, and in favor of Bustos, when MISC's petition has utilized the the same exact technique Bustos had previously used. An interesting dichotomy arises if Bustos opposes this Review -- it would then appear Bustos would be arguing against the grant of their previous petition against K232FM.

In further comparison of the Bithlo and Eaglemount Petitions, both did not provide direct interference demonstrations, while MISC did.¹⁹ These letter judgements would seem inconsistent in rigor compared to the MISC judgement.

Letter Decision then delves into proper FCC usage of Longley-Rice. It is well-known that the Audio Division has accepted Longley-Rice to meet alternative coverage of community of license requirements for FM stations.²⁰ The FCC's Office of Engineering Technology Bulletin

¹⁸ *Letter to Dennis J. Kelly, Esq. et al, In re: Salem Media of Oregon, Inc.* Ref. 1800B3-SS concerning K232FM, Eaglemount, Washington. April 11, 2017. Furthermore, there was a subsequent contest using Longley-Rice from petitioner Extra Mile Media, Inc. regarding another K232FM modification which was granted by the FCC (see *Letter to Todd A Steiner et. al., In re: Salem Media of Oregon, Inc.* Ref. 1800B3-ATS concerning K3OODH, Portland, Oregon, September 25, 2017).

¹⁹ Attachment E, Petition for Reconsideration.

²⁰ See *Letter to KMAJ-FM Topeka, Kansas from FCC*, August 8, 2002. Letter outlined the specific guidelines required to propose using 70 dBu Longley-Rice coverage instead of FCC F(50,50) 70 dBu

#69 outlined usage of Longley-Rice also for digital television.²¹ It is also mandated under Section 339(c)(3) of the Communications Act to prescribe a reliable point-to-point predictive model for satellite reception.²² The Media Bureau currently uses the Longley-Rice FORTRAN code on its Sun Microsystem Enterprise 3500 and UltraSPARC computers. The FCC can readily reproduce and validate these demonstrations. Petitions concerning Section 74.1204(f) are not *applications*, so it is believed there is staff flexibility in what is accepted demonstration-wise.

From the demands of the procedure derived in *ACE*, it does not make sense if a petitioner is *not using Longley-Rice*. This is with respect to the demand of Step 4, “evidence that grant of the authorization will result in interference to the reception of the ‘desired’ station at that location.” After a petitioner has demonstrated the 60 dBu coverage areas of a translator and their LPFM facility, the ensuing interference is implicit related to the laws of propagation when demonstrated by FCC contours, and it is redundant to go through the exercise. It is like being asked the color of the sun anytime anyone needs to report that it is in the middle of daytime outside (and not stating the color will result in dismissal). In more specific terms, if you have a 60 dBu contour of a new translator, and the translator complies with §74.1204(a)(4), it is implied without asking that the proposed translator (if it is a co-channel) will be more than 20 db below a petitioner’s LPFM (the definition of FCC co-channel interference). The only instance in

coverage. Cases where the terrain departs widely from a 50-meter roughness value. Terrain roughness (Δh), derived by the FCC in 1975, where the 50-meter value represents an average value for terrain in the US. See 56 FCC 2d 749 (1975).

²¹ *Longley-Rice Methodology for Evaluating TV Coverage and Interference*. This Bulletin provides guidance on the implementation and use of Longley-Rice methodology for evaluating TV service coverage and interference in accordance with Sections 73.622, 73.623 and 74.704 of the FCC rules (February 6, 2004).

²² Individual Location Longley-Rice (ILLR) is used to determine whether a given viewer is within the qualifying signal of local television stations. If the test reveals a low signal, the viewer is allowed to utilize a satellite feed.

which that is not true is when terrain deviates in a fashion to diverge from it being demonstrated via §73.313 method (pockets of terrain blockage, or extremely elevated terrain unable to be gauged by §73.313). **The only methodology at the petitioner's disposal to demonstrate this is Longley-Rice.** Otherwise, requesting the petitioner to go through the FCC method to determine the U/D ratio for proof of interference is purely superfluous. Dismissal on lack of proof on this technicality is then not rooted in any lack of proof of *actualized interference*, but degree of literal assessment of the petitioner's findings. Furthermore, by definition within "Step 4", the ascertainment of "interference to the reception" is referring to the **proposed actual listener reception** at a point. Using the FCC method can be completely removed from the listener's actual reception, which is hinged upon localized terrain and groundcover attributes, only demonstrable via Longley-Rice propagation. Actual listener reception ascertainment is different than predicted coverage (FCC contours). Similarly, this is why it is codified that the FCC utilize *Individual Location Longley-Rice* to determine whether a given viewer is within the qualifying signal of local television stations when gauging satellite signal channel availability.²³

Even if the Longley-Rice showing is disregarded within MISC's Reconsideration, MISC's petition demonstrates the minimum to show interference to KXRW-LP. In the *Reconsideration Attachment G* (Attachment A-1 here), MISC provides the §73.313 calculated KXRW-LP 40 dBu contour in relation to the K260DK translator. At the the positioning shown, it is demonstrated that (A) KXRW-LP is listenable within the K260DK 60 dBu contour, and (B) the U/D derived from this implies interference to KXRW-LP at the listenership location. With *Reconsideration Attachment C* (Attachment A-2 here) showing the listener locations within the K260DK, MISC has supplied everything required within the prescribed protocol.

²³ *Supra* 21.

III. THE GRANT OF K260DK CONTRAVENES LCRA SECTION 5.

MISC asserts within Reconsideration that the “Local Community Radio Act states that decisions between LPFM and translator usage should be ‘made based on the needs of the local community,’”²⁴ and thus via statute, KXRW-LP should be chosen for broadcast on 99.9 FM over K260DK in the Vancouver-Portland area. Within the *Letter Decision*, the FCC disagrees, proffering two oblique references to substantiate their decision comprising one paragraph within the eight-page decision.²⁵ MISC believes the denial’s assessment diverges from precedent.

Translator applications must pass the requirements of LCRA to be licensed. Bustos does not provide this within application for construction permit for K260DK. Section 5(1) ensures licenses for FM translator and low power FM stations are available. After the enactment of the LCRA in 2010, the FCC set a course to align application processing to this mandate. In early 2013 within the LPFM Sixth Report and Order, the Commission developed conditions for translators for ensure spectrum balancing. This included that translator applicants needed to submit a LPFM preclusion study:

We agree with the condition advocated by the Joint Petitioners and REC that the proposed translator station cannot preclude approval of a future LPFM application in the grid for that market, under the processing policy delineated in Section II.B of the Fourth Report and Order, or at the proposed out of grid transmitter site. **To satisfy this condition, applicants must submit an LPFM preclusion study demonstrating that grant of the proposed translator station will not preclude approval of a future LPFM application.** As we explained in the Fourth Report and Order, one of our broad principles for implementation of the LCRA is that our primary focus under Section 5(1) must be to ensure that translator licensing procedures do not foreclose or unduly limit future LPFM licensing, because the more flexible translator licensing standards will make it much easier to license

²⁴ *Reconsideration* p. 5, referencing to Section 5(2) of H.R. 6533 — 111th Congress: Local Community Radio Act of 2010.

²⁵ *Letter Decision*, p. 7.

new translator stations in the future. This condition is consistent with that broad principle.²⁶
[underlined and bolded for emphasis]

In the prior LPFM *Fourth Further Notice* the FCC verified it was within its purview to limit translator applications to meet the terms of the LCRA: “...we conclude that adoption of the caps to safeguard the integrity of our licensing processes is consistent with Section 5’s requirement to ensure that licenses are available to both LPFM and translator services.”²⁷ Within *Creation of a Low Power Radio Service, Fourth Report and Order*, the Commission interpreted Section 5(1) as a stipulation to balance secondary service spectrum: “...our interpretation of Section 5(1) enables us to account for the present disparities between the two services.”²⁸

Furthermore, Section 5(2) states “such decisions are made based on the needs of the local community.” Section 5(2) determines the ratio of LPFM and translators in each area. From *LPFM Fourth Report*, the FCC determines that LPFM is the best usage for urban secondary service spectrum within specific areas: “We believe that LPFM stations can best serve the needs of local communities in areas with significant populations where LPFM service is practical and sustainable.”²⁹ This viewpoint is recently underscored in a recent Audio Division letter decision: “LPFM stations, with limited coverage and other resource constraints, are better suited to serve more densely populated areas.”³⁰ The FCC compliments that viewpoint by stating translators are better suited towards rural areas: “In its analysis of Section 5, the

²⁶ Para 59. *Creation of a Low Power Radio Service and Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Fifth Order on Reconsideration and Sixth Report and Order, 27 FCC Rcd 15402 (2012) (“*Sixth Report and Order*”).

²⁷ Para 55. *Creation of a Low Power Radio Service and Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Fourth Report and Order and Third Order on Reconsideration, 27 FCC Rcd 3364 (2012) (“*LPFM Fourth Report and Order*”).

²⁸ Para 17. *LPFM Fourth Report and Order*.

²⁹ Para. 39 *LPFM Fourth Report and Order*.

³⁰ *In re: “All Pending Translator Applications.”* Letter Decision 1800B3-TSN, DA 18-597. June 8, 2018 (“June 2108 Translator Denial”).

Commission noted that translators are inexpensive to construct and operate, and can effectively bring service to rural and underserved areas.”³¹ Section 5 is explicit to define “availability” of this secondary service area in terms of “spectrum” and not *number of facilities*.³² Given this FCC precedent for Section 5(2), the majority of secondary service spectrum should be reserved for LPFM in urban areas per “the needs of the local community”, and a lesser amount should be reserved for translators in these areas. If the FCC does not believe this is the case, its definition of Section 5(2) (“such decisions are made based on the needs of the local community.”) is not defined, and there is no Section 5(2) compliance across the board.

Taking into consideration above, the requisite preclusion study for the proposed translator is required. Portland is an urban community. Thus, the translator application should demonstrate that the current licensed/permitted spectrum for translators in Portland should currently occupy less secondary service spectrum than LPFM, or have sufficient reserved spectrum left for future LPFM to counter that majority translator usage. Totalling the area / population of spectrum utilized for translators and LPFM within the Portland area, translators covered 10,047,939 persons and 10,239.1 sq km and LPFM covered 2,266,851 persons and 2,099.7 sq km (see Attachment B).

The numbers above demonstrate that vastly more spectrum is allocated for translator usage than LPFM with the urban area. Because the Portland area has secondary service spectrum predominantly allocated to translators, when Section 5(2) prescribes urban spectrum should be predominately utilized for LPFM in this area, this application, which proposed more spectrum for translators, does not comport to the LCRA. Because of this evidence, LCRA

³¹ *June 2108 Translator Denial*, page 3 referencing *LPFM Fourth Report*.

³² LCRA Section 5 title is explicit: “Section 5.Ensuring availability of spectrum for low-power FM stations”

Section 5 sides with KXRW-LP concerning “the needs of the community.” From that, K260DK would appear to need to be dismissed.

However, in the K260DK *Letter Decision*, the FCC rejects the assertion that Section 5(2) favors LPFM service in this situation:

...we remind MISC that Section 5 of the LCRA also requires that Commission ensure "licenses are available to FM translator stations, FM booster stations, and lowpower FM stations" and that "FM translator stations, FM booster stations, and lowpower FM stations remain equal in status." In implementing the LCRA, the Commission noted that "translators and LPFM stations both serve the needs of communities."

The FCC appears to construe this statement as *in support of the K260DK permit*. The statement does not guide preference to either LPFM or translator service, nor does it interpret Section 5(2). It merely quotes neutral statements outside of precedent interpretation to recontextualize the LCRA meaning to be equivocal, defeating the purpose of the LCRA. Moving further through the text:

Bustos applied for the Translator as part of the Commission's efforts to revitalize the AM radio service, and the Commission has noted that it "does not have a statutory obligation under the LCRA or any other statute to prefer possible LPFM protection over revitalization of the AM radio service," and further held that because the AM revitalization proceeding "addresses community needs by allowing improved primary service by AM broadcasters, the requirements of Section 5 of the LCRA have been met."

To have one sentence (above) encapsulate the a verdict of whether Section 5(2) supports LPFM or translator in this case is facile. Furthermore, the interpretation is ambiguous and counter to precedent.

First, the statement above quotes from a narrow judgement in response to a Petition for Reconsideration filed regarding *location constraints of a cross-service translator in relation to*

the AM facility chooses to rebroadcast. The particular judgement did not create any new precedent concerning LCRA Section 5(2). Moreover, the entire *Revitalization of the AM Radio Service* (“AM Revitalization”) proceeding performed no cogitation, or mention, concerning the cross-service translators and LCRA Section 5. *AM Revitalization* proceeding in itself does not assert that cross-service translators have any distinguished public interest status different from regular translators.

Let us parse the statement above for meaning: “[The FCC] does not have a statutory obligation under the LCRA or any other statute to prefer possible LPFM protection over revitalization of the AM radio service”. This is quoted from *Revitalization of the AM Radio Service, Order on Reconsideration* (“Order on Reconsideration”).³³ This statement is not substantiated within *Order on Reconsideration* by reference to statute or explanation. Our assumption is this is derived from LCRA Section 5(3): “FM translator stations, FM booster stations, and low- power FM stations remain equal in status...” and thus *equal status* prevents preference of one service above the other. But this does not mean Section 5(1) and 5(2) evaporate. Lest we forget, there was an FCC obligation to dismiss a large sum of Auction No. 83 translators “to account for the present disparities between the two services” to comply with LCRA Section 5.³⁴

Moving forward: “...because the AM revitalization proceeding ‘addresses community needs by allowing improved primary service by AM broadcasters, the requirements of Section 5 of the LCRA have been met.’” This statement does not align with precedent regarding how Section 5(2) works. The interpretation of LCRA within *Order on Reconsideration*, for which the

³³ *Revitalization of the AM Radio Service*, Order on Reconsideration, FCC 18-64, para. 14 (2018).

³⁴ *Supra* 28.

K260DK letter decision was premised, does not appear correct. Delving into that pertinent text from *Order on Reconsideration* it states:

To the extent the Commission is obliged to consider local community needs in the abstract, the Commission has stated that FM translators and LPFM stations “both serve the needs of communities, albeit in different ways.” While the Commission went on to note that LPFM stations undertake specific commitments to local programming, in deciding to offer AM stations more flexibility in siting fill-in cross-service translators, including eliminating a set distance limit, the Commission recognized that such flexibility was in the public interest, as it allows an AM station to improve its program service to listeners in the local communities within its primary service contour. Given that the record, as discussed above, does not establish the threat to LPFM licensing that Prometheus posits, and that the *Second R&O* addresses community needs by allowing improved primary service by AM broadcasters, the requirements of Section 5 of the LCRA have been met.³⁵

The reasoning (above) from *Order on Reconsideration* blurs LCRA Section 5 precedent within *Creation of a Low Power FM Radio Service, Fourth Report and Order* and *Third Order on Reconsideration* with *AM Revitalization Second Report and Order*.³⁶ **The problem is the *AM Revitalization* proceeding, in total, never contemplated any LCRA issues.** The above passage states since “[the] Commission recognized that such flexibility was in the public interest... it allows an AM station to improve its program service to listeners in the local communities within its primary service contour.” It then suggests that since this is in the public interest, “the [AM] *Second R&O* addresses community needs by allowing improved primary service” which fits under Section 5(2) per the *needs of the local community*. This reasoning was contrived on-the-spot (within the *Order on Reconsideration*) retroactively solidifying a Section 5 rationale for *AM Revitalization* (which, again, never contained any LCRA reasoning). The Commission cannot conjure public interest needs on a whim within a reconsideration denial for *only certain (cross-service) translators* to resonate with statutory requirement, changing the

³⁵ *Ibid.*

³⁶ *Revitalization of the AM Radio Service*, Second Report and Order, 32 FCC Rcd 1724 (2017) (“AM Second R&O”).

LPFM Fourth Report and Order rulemaking precedent. But even if it could, let us analyze how this would impact future Section 5(2) decision-making:

As examined above, it previously it was determined within *LPFM Fourth Report or Order* that Section 5(2) (“needs of the community”) was narrowly defined to mean that (A) LPFM was best suited in urban areas, and (B) translators were best suited towards rural areas. The *Order on Reconsideration* then implies that (C) cross-service translators are a need in all communities. Read all together, “C” cancels out “A” and “B”, and we are left with *LPFM is best suited in urban communities unless a cross-service translator desires to locate within rural or urban communities first*. This essentially nullifies Section 5(2) to mean nothing except that the needs of the community align with the secondary service broadcast entity that first applies for the frequency (or, essentially, *the broadcaster determines the “need” for the community*). The original intention of Section 5(2) was not drafted to have capricious meaning.

So we are left here with the only logical rationale based upon legitimate precedent: LPFM service is considered the principle service need for the community in urban areas. Because Portland secondary service spectrum is primarily occupied by translators, the addition of K260DK service in Portland superseding KXRW-LP programming on 99.9 FM is contrary to LCRA Section 5.

IV. CONCLUSION.

MISC asserts: (1) The use of Longley-Rice propagation has been condoned for previous successful §74.1204(f) petition contests. It should be accepted in the case of MISC’s

Reconsideration. In addition, the FCC previously sided with Busto's Eaglemount Petition, which utilized Longley-Rice propagation. Siding against MISC using the same protocol Bustos successfully used previously is tantamount to inexplicable Commission bias in favor of Bustos.

(2) The degree of execution of protocol derived in *ACE* has been scrutinized differently per contest, with U/D showings often engineering busy-work depicting implied interference. The rigor of MISC's demonstrations exceeded two previously accepted petitions. (3) Even ignoring the Longley-Rice showings, MISC's Reconsideration provided the necessary information to comply with the *ACE* protocol. (4) FCC's LCRA reasoning within the *Letter Decision* is in conflict with precedent. LCRA Section 5 appears to favor KXRW-LP over K260DK in this specific case. Because of this, the decision concerning the denial of MISC's Reconsideration should be reversed, and the grant of BNPFT-20171212AAF should be rescinded citing K260DF's conflict regarding §74.1204(f) and LCRA.

Respectfully Submitted By,

A handwritten signature in black ink, appearing to read 'Phil Busse', with a stylized, cursive script.

Phil Busse
Executive Director
Media Institute for Social Change

1639 SE 37th Ave
Portland, Oregon 97214
503-975-4545

November 13, 2018

CERTIFICATE OF SERVICE

I, Susan Galaviz, hereby certify that a copy of this Petition for Reconsideration was sent first class USPS November 14, 2018 to:

BUSTOS MEDIA HOLDINGS, LLC
5110 S. E. STARK STREET
PORTLAND OR 97215

Signed:



TECHNICAL CONSULT CERTIFICATION

I declare under penalty of perjury, that the technical content of the Application for Review and Attachments are true and accurate to the best of my knowledge and belief. I further certify over 10 years experience in submitting engineering exhibits before the FCC, 20 years performing broadcasting engineering work associated with radio facilities, a degree in Engineering from the University of California, Davis, and familiarity with FCC regulations.



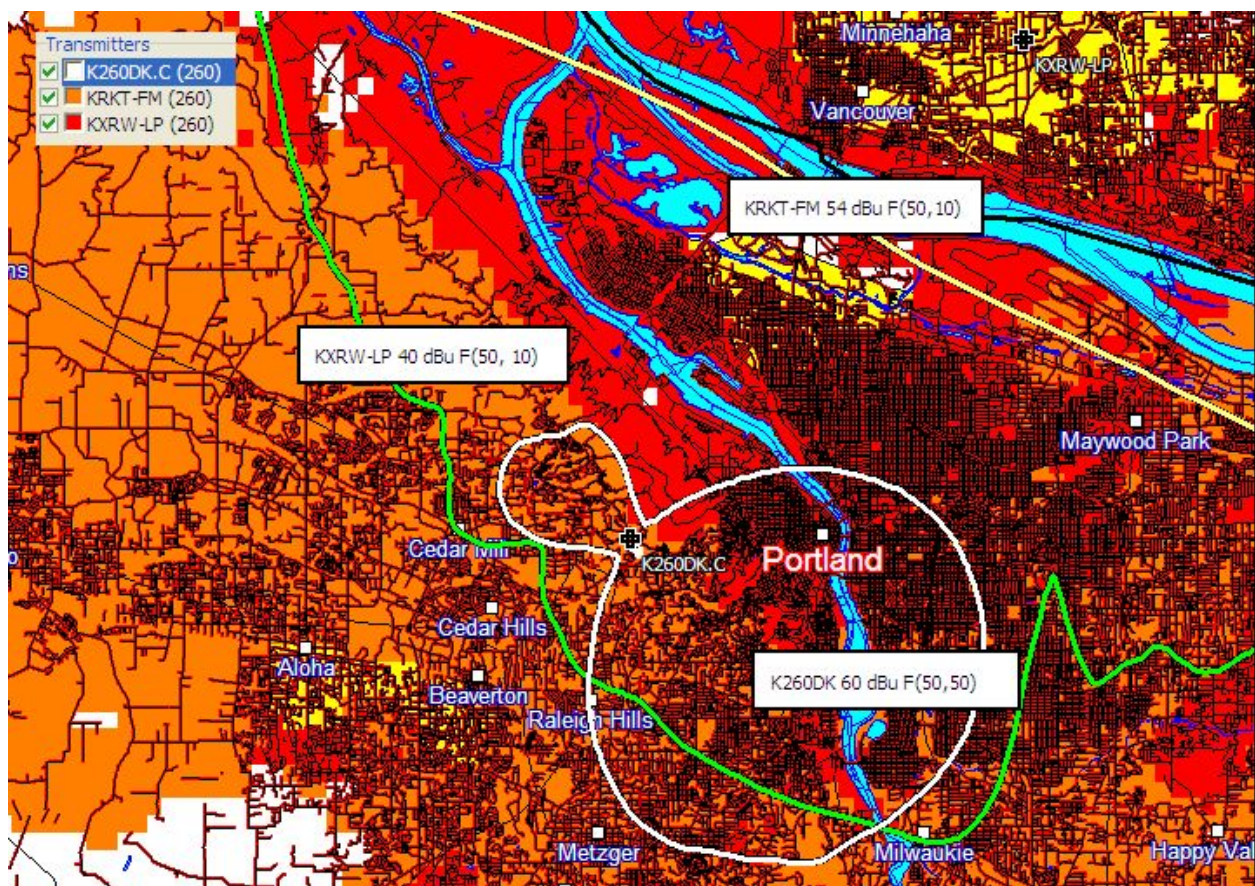
11/13/2018

Todd Urick
todd@commonfrequency.org

ATTACHMENT A-1:“ATTACHMENT G” FROM MISC’S PETITION FOR RECONSIDERATION:

Ignoring Longley-Rice propagation, the 40 dbu contour from KXRW-LP is demonstrated below in relation to K260DK’s 60 dBu, demonstrating (A) KXRW-LP coverage into the translator’s coverage area, and (B) demonstrating that the K260DK signal with create FCC-defined interference related to the contours.

ATTACHMENT G: Incoming co-channel interference to K260DF.



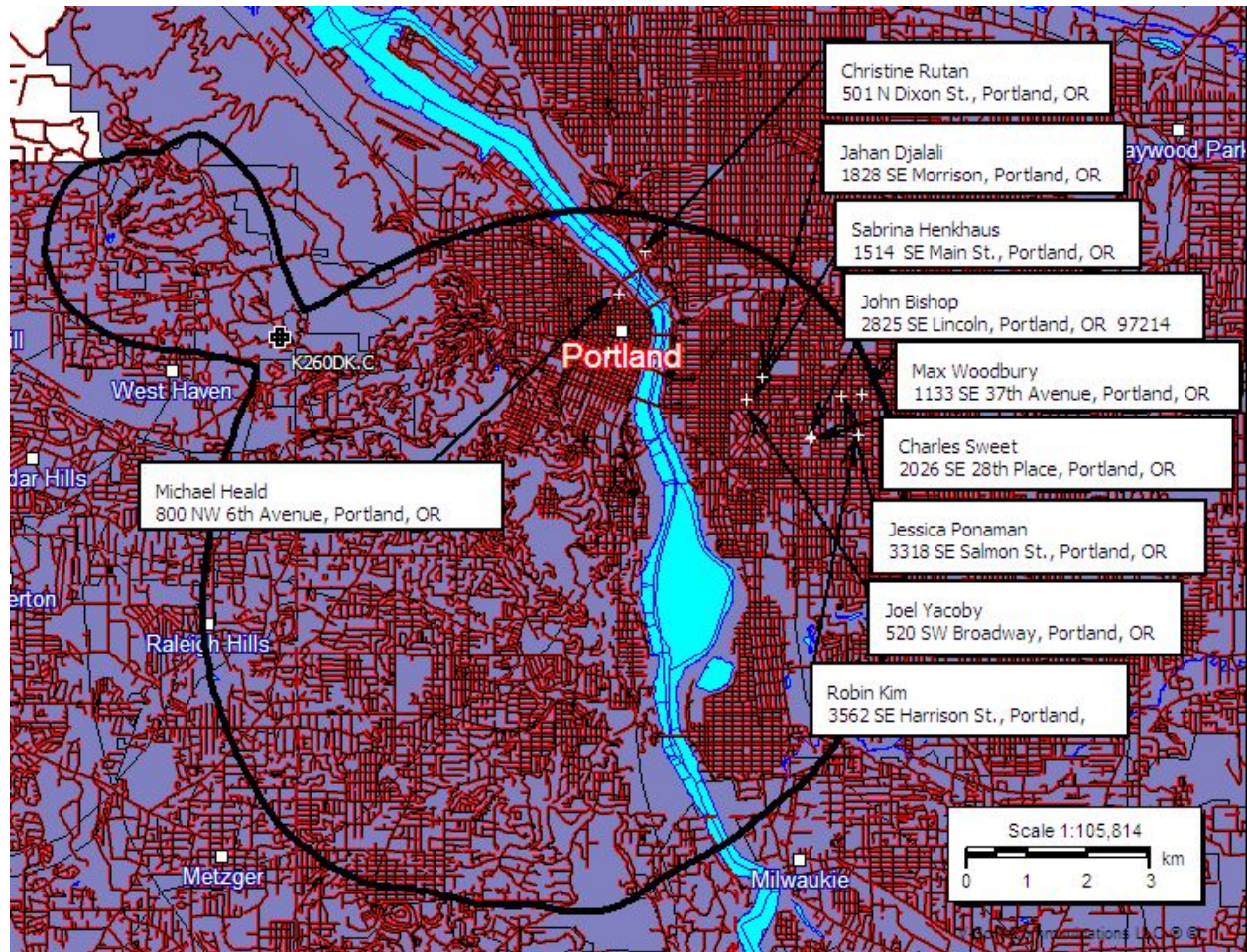
- Orange area demonstrates areas where the KRKT-FM D/U is stronger than 20db below K260DK signal.
- Red area demonstrates areas where the KXRW-LP D/U is stronger than 20db below K260DK signal.

White contour K260DK (60 dBu) is surpassed by:

- Green contour KXRW-LP 40 dBu F(50, 10) (~3/4th of the area).
- Yellow contour KRKT-FM 54 dbu F(50, 10).(all of the area).

ATTACHMENT A-2: "ATTACHMENT C" FROM MISC'S PETITION FOR RECONSIDERATION

ATTACHMENT C: Off-the-air listenership of ten persons within proposed K260DK 60 dBu FCC contour per Section 74.1204(f).



ATTACHMENT B: TOTALS FROM PORTLAND AREA'S TRANSLATOR AND LPFM

Population Report for All Contours (computed with VSoft Commander)					
			Population	Housing Units	Area (sq. km)
K220IN (220)	[Portland, OR]				
FCC F(50-50)	60.00 dBu (	654,601	293,812	486.8	
K224DL (224)	[Portland, OR]				
FCC F(50-50)	60.00 dBu (	1,399,767	592,325	1561.7	
K228EU (228)	[Portland, OR]				
FCC F(50-50)	60.00 dBu (	1,115,963	481,011	1048.6	
K240CZ (240)	[Tigard, OR]				
FCC F(50-50)	60.00 dBu (	716,164	321,000	501.1	
K248DD (248)	[Portland, OR]				
FCC F(50-50)	60.00 dBu (	114,478	44,252	382.7	
K272EL (272)	[Portland, OR]				
FCC F(50-50)	60.00 dBu (	1,304,510	556,309	1382.2	
K275CH (275)	[Gresham, OR]				
FCC F(50-50)	60.00 dBu (	1,349,615	573,416	1507.3	
K279BO (279)	[Portland, OR]				
FCC F(50-50)	60.00 dBu (	1,304,581	556,333	1389.1	
K283BL (283)	[Portland, OR]				
FCC F(50-50)	60.00 dBu (	1,349,615	573,416	1507.3	
K296FT (296)	[West Haven, OR]				
FCC F(50-50)	60.00 dBu (	738,645	331,085	472.3	
Total		10047939		10239.1	

Population Report for All Contours

			Population	Housing Units	Area (sq. km)
KBSF-LP (264)	[Portland, OR]				
FCC F(50-50)	60.00 dBu (	163,872	63,897	109.0	
KDOO-LP (268)	[Portland, OR]				
FCC F(50-50)	60.00 dBu (	154,111	64,601	96.7	
KFFD-LP (252)	[Beaverton, OR]				
FCC F(50-50)	60.00 dBu (	157,428	79,693	99.9	
KFFP-LP (212)	[Portland, OR]				
FCC F(50-50)	60.00 dBu (	181,486	88,967	101.1	
KIEV-LP (273)	[Camas, WA]				
FCC F(50-50)	60.00 dBu (	146,008	55,592	385.3	
KISN-LP (236)	[Portland, OR]				
FCC F(50-50)	60.00 dBu (	160,176	63,690	116.0	
KOUV-LP (300)	[Vancouver, WA]				
FCC F(50-50)	60.00 dBu (	23,706	8,120	71.8	
KQRZ-LP (264)	[Hillsboro, OR]				
FCC F(50-50)	60.00 dBu (	152,173	58,835	137.7	
KSFL-LP (256)	[Portland, OR]				
FCC F(50-50)	60.00 dBu (	249,730	122,608	114.6	
KVBE-LP (208)	[Portland, OR]				
FCC F(50-50)	60.00 dBu (	107,854	41,259	96.0	
KVNX-LP (248)	[Vancouver, WA]				
FCC F(50-50)	60.00 dBu (	18,556	6,172	70.1	
KXMG-LP (244)	[Portland, OR]				
FCC F(50-50)	60.00 dBu (	106,965	40,958	95.0	
KXRU-LP (288)	[Portland, OR]				
FCC F(50-50)	60.00 dBu (	192,697	76,075	137.0	
KXRW-LP (260)	[Vancouver, WA]				
FCC F(50-50)	60.00 dBu (	122,548	51,833	106.2	
KXVY-LP (216)	[Wilsonville, OR]				
FCC F(50-50)	60.00 dBu (	19,962	8,752	117.7	
KXYQ-LP (268)	[Portland, OR]				
FCC F(50-50)	60.00 dBu (	147,019	56,677	143.7	
KZRY-LP (244)	[Portland, OR]				
FCC F(50-50)	60.00 dBu (	162,560	68,171	101.9	
Total		2266851		2099.7	

ATTACHMENT C: BITHLO PETITION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

In the matter of:)
)
Unity Broadcasting, LLC) BNPFT-20171206AAF
Application for new FM translator)
Facility ID # 201532)
)

PETITION TO DENY

Hispanics United in Broadcasting (“HUB”), a party with standing to file in this proceeding files this *Petition to Deny* the above captioned application as a grant of this application would result in interference to established listeners of WRXW-LP.¹

WRXW-LP has been licensed since October, 2015 and from its current facility since June, 2017.² Identifying an underserved audience in the area, WRXW-LP has been providing a community service through its outreach to the large population of elderly persons in the Orlando area. Since being licensed, WRXW-LP has developed a loyal audience both inside and outside of the 60 dBu service contour of the station.

On August 2, 2017, in response to the Public Notice announcing a filing window for new construction permits for FM translators for the sole purpose of rebroadcasting an AM broadcast station³, Unity Broadcasting, LLC (“Unity”) filed short-form application BNPFT-20170802AAI. The application was eventually declared singleton and appeared on a public notice announcing a

¹ - HUB is the licensee of Low-Power FM (LPFM) station WRXW-LP, Winter Park, Florida. WRXW-LP is located 11 kilometers from the proposed translator site and operates on the same channel as the proposed translator. As HUB would be adversely impacted and experience injury and audience loss as a result of the application grant, they have standing to participate in this proceeding in accordance with 47 C.F.R. §1.939(d).

² - See FCC File No. BLL-20170601AFY, granted June 6, 2017. The previously licensed facility for WRXW-LP operated on the same channel and was merely 200 meters from the currently licensed site. See also FCC File No. BLL-20151013AEH, granted October 19, 2015.

³ - See *Filing Instructions for Cross-Service FM Translator Auction Filing Window for AM Broadcasters*, 32 FCC Rcd 4663 (2017).

window when Unity's long-form 349 application can be filed.⁴ On December 6, 2017, Unity filed the above captioned application as their long-form 349 application. This application specified a facility that was a permitted minor change from their short form facility.⁵

§74.1204(f) of the Commission's Rules states:

An application for an FM translator station will not be accepted for filing even though the proposed operation would not involve overlap of field strength contours with any other station, as set forth in paragraph (a) of this section, if the predicted 1 mV/m field strength contour of the FM translator station will overlap a populated area already receiving a regularly used, off-the-air signal of any authorized co-channel, first, second or third adjacent channel broadcast station, including Class D (secondary) noncommercial educational FM stations and grant of the authorization will result in interference to the reception of such signal.⁶

In response to an outreach, HUB has been contacted by three disinterested listeners who are located outside of the 60 dBu service contour of WRXW-LP but are within the 60 dBu service contour of the proposed translator and regularly listen to WRXW-LP.

In promulgating §74.1204(f), the Commission stated that it "will not grant an application if an objecting party provides convincing evidence that the proposed translator would be likely to interfere with the reception of a regularly received off-the-air existing service, even if there is no predicted overlap."⁷ The Commission subsequently clarified that the parties alleging interference under Subsection (f) must provide, at a minimum: (1) the name and specific address of each listener for which it claims credit; (2) some demonstration that the address of each purported listener for which it claims credit falls within the 60 dBu contour of the proposed translator station; (3) some evidence, such as a declaration from each of the claimed listeners, that the

⁴ - See *Media Bureau Announces FM Translator Filing Window for Long-Form Applications*, 32 FCC Rcd. 9248 (MB, 2017).

⁵ - See *Id.* at page 2.

⁶ - 47 C.F.R. §74.1204(f). See also *Centro Cristiano de Vida Eterna*, FCC File No. BLFT-20161005ABT, *Letter Decision* (MB, 2016). ("Subsection (f) [...] protect[s] LPFM stations from interference by subsequently proposed new or modified FM translator stations.").

⁷ - See *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations*, Memorandum Opinion and Order, 5 FCC Rcd 7212, 7230, para 128 (1990), *modified*, 6 FCC Rcd. 2334 (1991), *recon den.*, 8 FCC Rcd 5093 (1993); see also *Caron Broad. Inc.*, Letter Order, 32 FCC Rcd 5692, 5696 (MB 2017) ("Caron").

person listens to the station at the specified location; and (4) evidence that the grant of the authorization will result in interference to the reception of the “desired” station at that location.⁸

To satisfy part (1) of this procedure, HUB provides the addresses and geographic coordinates of each listener that would receive interference as a result of the grant of the above captioned application:

Party Name	Address	NAD27 Coordinates
Roberto Concepcion	1617 W Central Blvd. Orlando, FL	28-32-32.8/81-24-09.0
Lollie S. Charland	2035 S. Countryside Cir. Orlando, FL	28-33-19.0/81-24-26.0
Patricia Chavez	6657 Stardust Ln. Orlando, FL	28-35-13.5/81-28-22.0

To satisfy part (2) of this procedure, Appendix A of this pleading includes map of the 60 dBu service contour of the above captioned application and the physical locations of the three addresses that are impacted by this grant.

To satisfy part (3) of this procedure, Appendix C of this pleading includes signed statements from each of the impacted listeners which certify that they listen to WRXW-LP over the air from the locations shown.

Finally, to satisfy part (4) of this procedure, Appendix B of this pleading includes a Longley/Rice propagation study of the proposed translator and the location of each of the affected listeners in order to demonstrate the predicted field strength at each address.

As we have demonstrated in these exhibits, once operational, the proposed translator facility will result in interference to the reception of existing co-channel LPFM station WRXW-LP. Failure to rescind this application will likely result in many more individuals receiving interference to their reception of WRXW-LP resulting in the Petitioner losing valuable acquired audience.

⁸ - See *Association for Community Ed.*, Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations, Memorandum Opinion and Order, 19 FCC Red 12682, 12687, para. 13 (2004). See also *Caron*, 32 FCC Red at 5696.

In consideration of the foregoing, HUB respectfully requests that the Media Bureau dismiss the application.

Respectfully submitted,


/S/

Suhai M. Sanchez
President
Hispanics United in Broadcasting
1729 Grand Rue Dr.
Casselberry, FL 32707

January 1, 2018

AFFIDAVIT

In accordance with §1.939(d) of the Commission's Rules, the information presented in this *Petition to Deny* is true and correct based on my personal knowledge.

/S/

Suhai M. Sanchez

President

Hispanics United in Broadcasting



CERTIFICATE OF SERVICE

A copy of the foregoing *Petition to Deny* is being sent via first-class mail upon the following:

John C. Trent, Esq.
200 S. Church Street
Woodstock, VA 22664
(*Counsel for Unity Broadcasting, LLC*)

/S/
Michelle Bradley
Founder
REC Networks
11541 Riverton Wharf Rd.
Mardela Springs, MD

January 1, 2018

ENGINEERING AFFIDAVIT

The preparation of the studies shown in Appendix A and B of this pleading as well as the confirmation that listeners mentioned were within the proposed service contour was prepared by myself. I am currently the primary policy advocate for the LPFM service with nearly 20 years of experience in the LPFM service alone as well as experience with FM translators and other services. Data was constructed using commercially available engineering software that is well accepted in the industry. I have verified that the information presented in this pleading is correct to the best of my knowledge.

/S/
Michelle Bradley
Founder
REC Networks

January 1, 2018

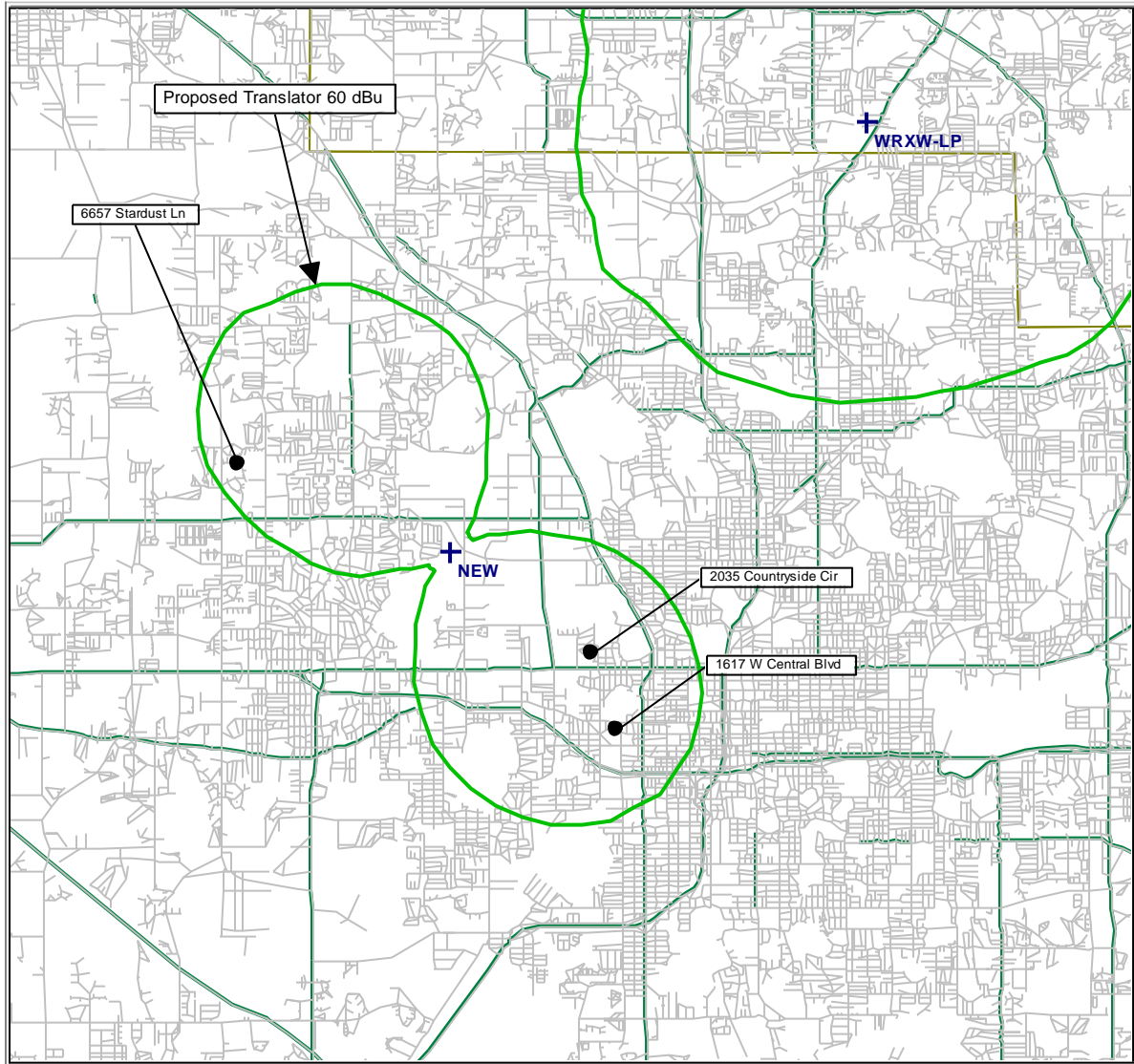
APPENDIX A

REC Networks

202 621-2355

Monday, January 1, 2018

WRXW-LP listeners inside 60 dBu of proposed translator



Map Scale: 1:102262 1 cm = 1.02 km V|H Size: 19.40 x 20.19 km

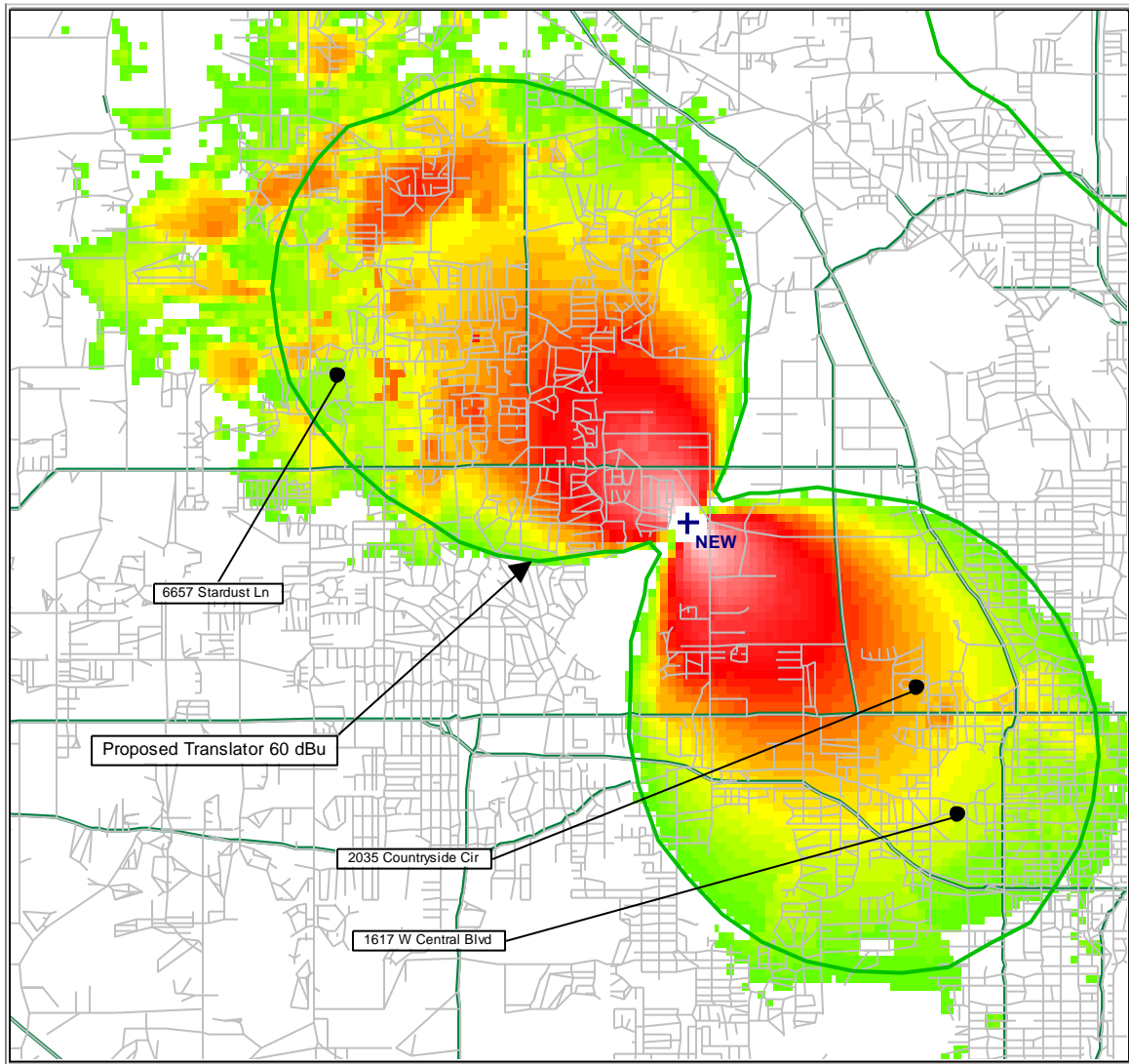
APPENDIX B

REC Networks

202 621-2355

Monday, January 1, 2018

Longley/Rice of proposed translator and WRXW-LP listeners inside proposed 60 dBu contour.



>54 dBu shown



Map Scale: 1:63080 1 cm = 0.63 km V/H Size: 11.68 x 12.16 km

APPENDIX C

STATEMENTS FROM LISTENERS OF WRXW-LP

NOTE: In the CDBS electronic filing, each statement will appear as a separate PDF file.

FEDERAL COMMUNICATIONS COMMISSION
445 12th Street, S.W.
WASHINGTON DC 20554

MEDIA BUREAU
AUDIO SERVICES DIVISION
APPLICATION STATUS: (202) 418-2730
HOME PAGE: WWW.FCC.GOV/MB/AUDIO

MAR 12 2018

PROCESSING ENGINEER: Robert Gates
TELEPHONE: (202) 418-0986
FACSIMILE: (202) 418-1410
INTERNET ADDRESS: Robert.Gates@fcc.gov

Unity Broadcasting LLC
50 S. Clarke Road
Ocoee, FL 34761

In Re: NEW(FM), Bithlo, FL
Facility ID # 201532
BNPFT-20171206AAF

Petition to Deny

Dear Applicant:

The staff has under consideration: (1) the above captioned application; (2) the Petition to Deny filed by Hispanics United in Broadcasting (HUB) on January 2, 2018 (3) all related pleadings. For the reasons set forth herein, we grant the Petition to Deny and dismiss the application BNPFT-20171206AAF.

HUB, licensee of WRXW-LP, Winter Park, Florida, filed a Petition to Deny stating that the proposed translator application (NEW(FM)) will cause interference to listeners of WRXW-LP. HUB states that this proposed facility is in violation of Section 74.1204(f). In order to provide convincing evidence under Section 74.1204(f) that grant of the translator construction permit “will result in interference to the reception” of an existing full-service station, an opponent must provide, at a minimum: (1) the name and specific address of each listener for which it claims credit; (2) some demonstration that the address of each purported listener falls within the 60 dBμ contour of the proposed translator station;¹ (3) some evidence, such as a declaration from each of the claimed listeners, that the person listens to the full-service station at the specified location; and (4) evidence that grant of the authorization will result in interference to the reception of the “desired” station at that location. The “undesired-to-desired” (“U/D”) signal strength ratio methodology may be used to demonstrate the potential for interference under Section 74.1204(f).² Section 74.1204(f) requires the objector to show that a specific U/D signal strength

¹ The best method is to plot the specific addresses on a map depicting the translator station’s 60 dBμ contour.

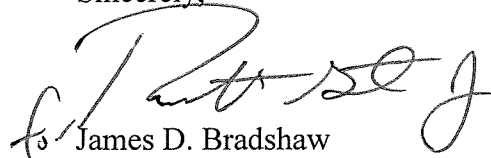
² See *The Association for Community Education, Inc.*, FCC 04-155, Para. 13, (rel. July 8, 2004).

ratio is exceeded at the location of a *bona fide* listener of the desired station to establish that interference will result.

The Petitioner submitted documentation from three listeners, Roberto Concepcion, Lollie Charland, and Patricia Chavez, that certified and they are listeners of WRXW-LP and live, work or travel within the 60 dBu contour of proposed translator. Since the Petitioner has demonstrated that there are listeners within the proposed 60 dBu contour of proposed application for NEW(FM), the application is dismissed.

Accordingly, the Petition to Deny filed on January 2, 2018 by HUB IS HEREBY GRANTED, the application BNPFT-20171206AAF IS HEREBY DISMISSED. These actions is taken pursuant to 47 C.F.R. § 0.283.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Bradshaw', with a large, stylized initial 'J' on the right side.

James D. Bradshaw
Deputy Chief
Audio Division
Media Bureau

CC: John Trent (email)
Suhai M. Sanchez

ATTACHMENT E: EAGLEMOUNT PETITION

BEFORE THE

Federal Communications Commission

WASHINGTON, D. C. 20554

In re Application of)	
)	
SALEM MEDIA OF OREGON, INC.	)	File No. BMPFT-20160729ANA
Portland, Oregon	)	Facility ID # 155139
)	
For Modification of)	
Construction Permit of)	
FM Translator Station K276FZ,)	
Eaglemount, Washington to)	
Channel 232 (94.3 MHz) at)	
Portland, Oregon (K232FM))	

TO: Honorable Marlene H. Dortch
Secretary of the Commission

ATTN: Chief, Audio Division, Media Bureau

PETITION FOR RECONSIDERATION

Bustos Media Holdings, LLC ("Bustos"), licensee of FM Broadcast Station KZZR, 94.3 MHz, Channel 232C2, Government Camp, Oregon, pursuant to 47 U.S.C. §405 and 47 C.F.R. §1.106, hereby respectfully seeks reconsideration of the August 26, 2016 action of the Audio Division, Media Bureau, granting the above-captioned application of Salem Media of Oregon, Inc. ("Salem") to modify the construction permit ("CP") of FM Translator Station K276FZ, Eaglemount, Washington, to specify operation as K232FM on 94.3 MHz at Portland, Oregon. Both KZZR and K232FM would operate within the Nielsen/Arbitron-defined Portland, Oregon radio metro market. In support whereof, the following is shown:

Preliminary Statement

1. This Petition is being filed within thirty days of the public notice of grant of the Salem application, **Broadcast Actions, Report No. 48810**, p. 6, released August 31, 2016, two days prior to the date hereof; therefore, pursuant to Section 1.106(f) of the FCC's rules, it is timely filed.

Section 1.106(b)(1) Showing; Failure to Give Public Notice

2. Section 1.106(b)(1) of the Commission's Rules allows a petition for reconsideration to be filed by any party to the original proceeding or any party whose interests will be adversely affected by the action taken by the Commission. If a petitioner was not a party to the original proceeding, it must show good reason for why it was unable to participate in the earlier proceeding. See e.g. **Anthony T. LePore, Esq. (KPTJ, Grape Creek, TX)**, 31 FCC Rcd 2217 (Bureau, 2016).

3. Bustos was unable to participate prior to the grant of the above-captioned application because it did not learn of its existence until it was granted. Despite the requirements of Section 74.1233(d)(1) that the Commission "periodically release a public notice listing those applications accepted for filing", the FCC gave a defective notice relative to the above-captioned application. In **Broadcast Applications, Report No. 28790**, p. 62, released August 3, 2016 (attached as Exhibit A), the above-captioned application was described to the public as follows:

WA BMPFT-20160729ANA K276FZ 155139 COMMUNITY PUBLIC RADIO, INC. Mod of CP
E 94.3 MHZ WA, EAGLEMOUNT

4. There was no notice given by the FCC that the actual applicant in BMPFT-20160729ANA, Salem Media of Oregon, Inc., proposed to relocate station K276FZ from Eaglemount, Washington to Portland, Oregon, some 170 miles south. Furthermore, the public notice of the grant of the above-captioned application, attached as Exhibit B, which fails to make any mention of Portland, Oregon, is equally as defective.

5. Bustos is an interested party in the above-referenced application due to the fact that its co-channel KZZR(FM) provides a Longley-Rice method 60 dBu and even 70 dBu field strength over large portions of Portland; Salem's proposed use of 94.3 MHz in Portland would cause destructive interference to substantial areas where KZZR(FM) can be heard. Bustos was foreclosed from actual knowledge of the filing of BMPFT-20160729ANA because of the defective and inaccurate public notice provided by the FCC on August 3, 2016. Bustos was illegally deprived of the opportunity to make a showing that, pursuant to Section 74.1204(f) of the FCC's Rules, Salem's proposed relocation of K276FZ to Portland cannot be granted.

6. It is settled law that a defective FCC public notice "was never validly promulgated and thus is without force against one without actual knowledge thereof". **Way of Life Television**

Network, Inc v. FCC, 593 F.2d 1356, 1358 (D. C. Cir. 1979), citing *Gardner v. FCC*, 530 F.2d 1086, 1089-90 (D. C. Cir. 1976).

7. Bustos was particularly required to receive an adequate notice of the filing of the above-referenced application because of the Congressional mandate to the FCC in Section 316(a) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. §316(a). The text of the statute is as follows:

(1) Any station license or construction permit may be modified by the Commission either for a limited time or for the duration of the term thereof, if in the judgment of the Commission such action will promote the public interest, convenience, and necessity, or the provisions of this chapter or of any treaty ratified by the United States will be more fully complied with. **No such order of modification shall become final until the holder of the license or permit shall have been notified in writing of the proposed action and the grounds and reasons therefor, and shall be given reasonable opportunity, of at least thirty days, to protest such proposed order of modification;** except that, where safety of life or property is involved, the Commission may by order provide, for a shorter period of notice. [emphasis supplied]

(2) Any other licensee or permittee who believes its license or permit would be modified by the proposed action may also protest the proposed action before its effective date.

8. The Salem station would operate on 94.3 MHz, the same channel as KZZR, in the same radio market. The Salem application clearly was not examined for what effect its Portland transmissions on 94.3 MHz would have on the co-channel KZZR license. The appellate court has recognized that the grant of one FM construction permit application could well result in increased interference to a co-channel FM station, thereby causing an indirect modification of the latter station's license.

In such a case, the provisions of Section 316 of the Act apply. ***Western Broadcasting Co. v. FCC***, 674 F.2d 44 (D. C. Cir. 1982).

9. It is Bustos' contention that the Salem station on 94.3 MHz at Portland will at least indirectly modify the KZZR license. Bustos never received the notice required by Section 316(a)(1) of the Act, and has never been given "a reasonable opportunity" to "protest such proposed order of modification". Since Bustos was not afforded its rights pursuant to 47 U.S.C. §316(a), it has a right to come forward and be heard on the issue of whether Salem's application can be granted.

Salem's K232FM Will Interfere with KZZR

10. Section 74.1204(f) of the Commission's Rules states:

An application for an FM translator station will not be accepted for filing even though the proposed operation would not involve overlap of field strength contours with any other station, as set forth in paragraph (a) of this section, if the predicted 1 mV/m field strength contour of the FM translator station will overlap a populated area already receiving a regularly used, off-the-air signal of any authorized co-channel, first, second or third adjacent channel broadcast station, including Class D (secondary) noncommercial educational FM stations and grant of the authorization will result in interference to the reception of such signal.

11. In order to provide "convincing evidence" under Section 74.1204(f), a party in the posture of Bustos and KZZR must provide: (1) the name and specific address of each listener for which it claims credit; (2) some demonstration that the address of each purported listener falls within the 60 dbu contour of the proposed translator station; (3) some evidence, such as a declaration from each of the claimed listeners, that the person,

in fact, listens to the full-service location at the specified location; and (4) evidence that grant of the proposed FM translator facility will result in interference to the reception of the "desired" station at that location. ***The Association for Community Education, Inc.***, 19 FCC Rcd 12682, 12685-86 (2004).

12. The names and addresses of sixteen (16) persons who live within the proposed 60 dBu contour of Salem's K232FM and who will experience interference to KZZR caused by K232FM are listed in Exhibit C.

13. Consulting radio engineer Erik C. Swanson, Hatfield & Dawson, Seattle, Washington, has prepared a map demonstrating that the addresses of said persons are within the 60 dBu contour of K232FM; this is attached hereto as Exhibit D.

14. Declarations under penalty of perjury that the persons listed in Exhibit C listen to KZZR are attached as Exhibit E.

15. Longley Rice studies prepared by Mr. Swanson showing KZZR's signal strength are attached as Exhibit F. These studies show that in many locations throughout metropolitan Portland, KZZR has at least 60 dBu field strength, and in some areas, 70 dBu or greater field strength. This is clear and convincing evidence Salem's 94.3 MHz translator, K232FM, will result in interference to the reception of the co-channel "desired" station, Bustos's KZZR.

16. A statement by Mr. Swanson verifying his engineering exhibits is attached hereto as Exhibit G.

17. Based on the foregoing exhibits, there is no doubt that Salem's K232FM will interfere with KZZR, in violation of Section 74.1204 of the FCC's Rules, and will require Salem's station to cease operating if it is ever built and placed into service.

Conclusion

18. The Salem FM translator station on 94.3 MHz at Portland, Oregon will cause destructive interference to co-channel KZZR, Channel 232C2, 94.3 Mhz, Government Camp, Oregon. The FCC had a 47 U.S.C. §316(a) obligation to notify Bustos, the licensee of KZZR, and to allow it a reasonable opportunity to be heard on the Salem application before it was granted. The FCC failed to do so; furthermore, the FCC's August 3, 2016 public notice of the filing of the above-captioned application was defective on its face because it failed to state the actual filer and real party in interest of said application, and because the notice failed to indicate that Salem proposed to use 94.3 MHz at Portland, Oregon, instead misleading the public by stating that the application was for "Eaglemount, Washington", 170 miles north of Portland on Washington State's Olympic Peninsula. Bustos's rights to notice and for an opportunity to be heard, both under Section 316(a) and under the Administrative Procedure Act generally (5 U.S.C. §706(2)), were violated. Bustos is therefore entitled to have an opportunity to seek reconsideration pursuant to Section 1.106 of the Commission's Rules.

19. Furthermore, the Salem station, if constructed and placed into operation, would cause substantial interference to co-channel KZZR, a station designed to serve the substantial Hispanic population in the Portland-Vancouver-Hillsboro MSA. This destruction of service to a recognized minority community would most certainly not serve the public interest, convenience and necessity.

WHEREFORE, Bustos Media Holdings, LLC urges that the Commission **RESCIND** the construction permit granted to Salem Media of Oregon, Inc. for a construction permit for a new FM translator station on 94.3 MHz at Portland, Oregon and either **DENY, DISMISS or RETURN IT TO PENDING STATUS**, and, further, that the Commission **GIVE NOTICE AND A RIGHT TO BE HEARD** to Bustos relative to the Salem application pursuant to Section 316(a) of the Commission's Rules.

Respectfully submitted,

BUSTOS MEDIA HOLDINGS, LLC

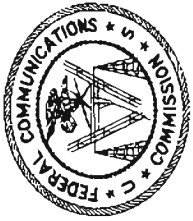
A handwritten signature in black ink, appearing to read "D. Kelly", written over a horizontal line.

By _____
Dennis J. Kelly
Its Attorney

LAW OFFICE OF DENNIS J. KELLY
Post Office Box 41177
Washington, DC 20018
Telephone: 202-293-2300
dkellyfcclaw1@comcast.net

DATED AND FILED: September 2, 2016

EXHIBIT A



PUBLIC NOTICE

Federal Communications Commission
445 Twelfth Street SW
Washington, D.C. 20554

News media information 202 / 418-0500 Recorded listing of releases and texts 202 / 418-2222

REPORT NO. 28790

Broadcast Applications

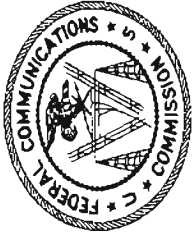
8/3/2016

<u>STATE</u>	<u>FILE NUMBER</u>	<u>E/P</u>	<u>CALL LETTERS</u>	<u>APPLICANT AND LOCATION</u>	<u>N A T U R E O F A P P L I C A T I O N</u>
--------------	--------------------	------------	---------------------	-------------------------------	--

FM TRANSLATOR APPLICATIONS FOR MINOR MODIFICATION TO A CONSTRUCTION PERMIT ACCEPTED FOR FILING

HI	BMPFT-20160729AMW		K265ET 147681 E 104.5 MHZ	OHANA BROADCAST COMPANY LLC HI , PRINCEVILLE	Mod of CP
OR	BMPFT-20160729AMX		K294CP 142743 E 106.3 MHZ	COMMUNITY TRANSLATOR NETWORK, LLC - DEBTOR-IN-POSSESSION OR , ROSEBURG	Mod of CP
CO	BMPFT-20160729AMY		K280FU 158405 E 106.7 MHZ	MOUNTAIN COMMUNITY TRANSLATORS, LLC CO , BRECKENRIDGE	Mod of CP
WA	BMPFT-20160729ANA		K276FZ 155139 E 94.3 MHZ	COMMUNITY PUBLIC RADIO, INC. WA , EAGLEMOUNT	Mod of CP
MO	BMPFT-20160729ANE		K283CA 141946 E 95.9 MHZ	MISSOURI RIVER CHRISTIAN BROADCASTING, INC. MO , FESTUS	Mod of CP

EXHIBIT B



PUBLIC NOTICE

Federal Communications Commission
445 Twelfth Street SW
Washington, D.C. 20554

News media information 202 / 418-0500 Recorded listing of releases and texts 202 / 418-2222

REPORT NO. 48810

Broadcast Actions

8/31/2016

<u>STATE FILE NUMBER</u>	<u>E/P</u>	<u>CALL LETTERS</u>	<u>APPLICANT AND LOCATION</u>	<u>N A T U R E O F A P P L I C A T I O N</u>
--------------------------	------------	---------------------	-------------------------------	--

Actions of: 08/26/2016

FM TRANSLATOR APPLICATIONS FOR MINOR MODIFICATION TO A CONSTRUCTION PERMIT GRANTED

TX	BMPFT-20160729AKV	K249FA 147702	TOP O' TEXAS EDUCATIONAL BROADCASTING FOUNDATION	Mod of CP
	E	97.7 MHZ	TX, SPEARMAN	

TN	BMPFT-20160729AKX	W296DE 67634	COMMUNITY BROADCASTING, INC.	Mod of CP
	E	107.1 MHZ	TN, LEBANON	

ID	BMPFT-20160729AMF	K272FS 141790	MINNESOTA PUBLIC RADIO	Mod of CP
	E	102.3 MHZ	ID, HAILEY	Engineering Amendment filed 08/03/2016

CO	BMPFT-20160729AMY	K294DB 158405	MOUNTAIN COMMUNITY TRANSLATORS, LLC	Mod of CP
	E	106.7 MHZ	CO, BRECKENRIDGE	

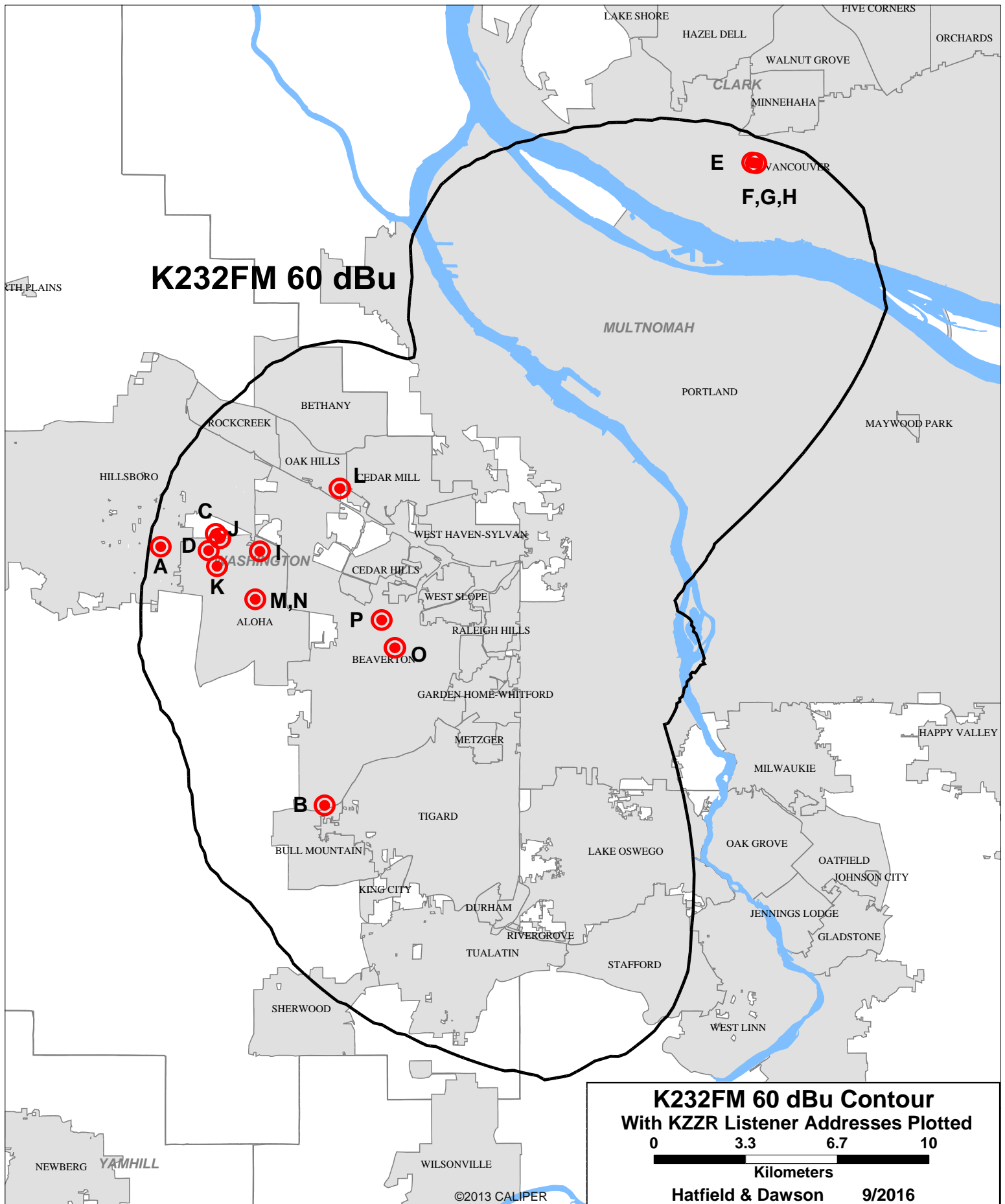
WA	BMPFT-20160729ANA	K232FM 155139	COMMUNITY PUBLIC RADIO, INC.	Mod of CP
	E	94.3 MHZ	WA, EAGLEMOUNT	

EXHIBIT C

A	Guadalupe Reyes 6667 SE Lois St. Hillsboro, OR 97123
B	Maria Duran 15330 SW Mallard Drive #101 Beaverton, OR 97007
C	Crisanta Salazar 20282 SW Kirkwood St. , Apt. 202 Beaverton, OR 97006
D	Efrain Abarca 1180 SW 206th Ave Beaverton, OR 97003
E	Maximino Gonzalez 3503 E 4th Plain Vancouver, WA 98661
F	Fabiola Lozano 2003 Todd Road Apt.# 41 Vancouver, WA 98661
G	Camerino Alvarez 2003 Todd Road, Apt. # 48 Vancouver, WA 98661
H	Alejandra Munguia 2003 Todd Road Apt. 42 Vancouver, WA 98661
I	Juan Hernadez 13820 SW Smokette Lane Aloha, OR 97006
J	Jose Perez 656 SW 201st Ave Aloha, OR 97003
K	Marlene Carbajal 20333 SW Erin Place Aloha, OR 97003

L	Jorge Herandez 14650 NW Cornell Rd Portland, OR 97229
M	Rocio Cabral 3460 SW 185th Ave #D Aloha, OR 97003
N	Carlos de La Hoz 3460 SW 185th Ave #B Aloha, OR 97003
O	Frank Galicia 5575 SW Franklin Ave Beaverton, OR 97005
P	Hilario Sanchez 12810 SW Canyon Rd. Beaverton, OR 97005

EXHIBIT D



***NOTE: 15 PAGES OF DECLARATIONS FOR EXHIBIT E
WERE EXCLUDED IN THIS ATTACHMENT BECAUSE
THEY WERE NOT PERTINENT AND TOOK TOO MUCH
DOCUMENT SPACE UP WITHIN THIS APPLICATION
FOR REVIEW***

EXHIBIT E

EXHIBIT F

EXHIBIT G

BENJAMIN F. DAWSON III, PE
THOMAS M. ECKELS, PE
STEPHEN S. LOCKWOOD, PE
DAVID J. PINION, PE
ERIK C. SWANSON, PE

THOMAS S. GORTON, PE
MICHAEL H. MEHIGAN, PE

HATFIELD & DAWSON
CONSULTING ELECTRICAL ENGINEERS
9500 GREENWOOD AVE. N.
SEATTLE, WASHINGTON 98103

TELEPHONE (206) 783-9151
FACSIMILE (206) 789-9834
E-MAIL hatdaw@hatdaw.com

JAMES B. HATFIELD, PE
CONSULTANT

MAURY L. HATFIELD, PE
(1942-2009)

PAUL W. LEONARD, PE
(1925-2011)

Engineering Statement Of Erik C. Swanson, P.E.

This Engineering Statement has been prepared on behalf of Bustos Media Holdings, LLC ("Bustos"), licensee of FM station KZZR, which operates on FM Channel 232C2 at Government Camp, Oregon.

On August 26, 2016, the Commission granted an application BMPFT-20160729ANA for modification of the construction permit for FM translator station K276FZ Eaglemount, Washington. Under the terms of the modified permit, the translator would relocate to Portland, Oregon, on Channel 232D, as K232FM. This operation would be cochannel with Bustos' existing full-power FM station KZZR. The KZZR service area includes many of the Portland metro communities, including Portland itself, and operation of K232FM would be expected to cause widespread interference to reception of KZZR.

The undersigned has prepared three maps in connection with this filing:

- a) A map showing the locations of KZZR listener addresses, within the translator's proposed 60 dBu contour;
- b) A map of the predicted KZZR signal into the Portland area, prepared using the Longley-Rice v1.2.2 methodology which is very familiar to engineering consultants and to Commission staff. This map demonstrates that KZZR places in excess of 70 dBu into the Portland metro area, including areas within the translator's 60 dBu contour, and;
- c) A map of the line-of-sight conditions from the KZZR transmitter site adjacent to the Timberline Lodge on Mount Hood. The antenna is located at an elevation of 6142 feet

above mean sea level, and has an excellent view into large portions of the Portland metro area, including areas within the translator's 60 dBu contour.

Statement of Engineer

This Engineering Statement has been prepared by me or under my direct supervision. I am a Partner in the firm of Hatfield & Dawson Consulting Engineers, and am registered as a Professional Engineer in the State of Washington. I hereby declare that the facts set out in the foregoing Engineering Statement, except those of which official notice may be taken, are true and correct.

Signed this 2nd day of September, 2016.



Erik C. Swanson, P.E.

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing "Petition for Reconsideration" were served by first class United States mail, postage prepaid, on this 2nd day of September, 2016 upon the following:

Penny Jackson, President
Community Public Radio, Inc.
527 Woodfern Court
Tallahassee, FL 32312

Frank R. Jazzo, Esquire
Fletcher, Heald & Hildreth PLC
1300 Seventeenth Street, 11th Floor
Arlington, VA 22209
Counsel for Salem Media of Oregon, Inc.



Dennis J. Kelly

ATTACHMENT F: EAGLEMOUNT LETTER DECISION



Federal Communications Commission
Washington, D.C. 20554

April 11, 2017

In Reply Refer to:
1800B3-SS

Dennis J. Kelly, Esq.
Law Office of Dennis J. Kelly
P. O. Box 41177
Washington, DC 20018

Davina Sashkin, Esq.
Fletcher, Heald & Hildreth, PLC
1300 N. 17th St., 11th Floor
Arlington, VA 22209

In re: **Salem Media of Oregon, Inc.**
K232FM, Eaglemount, Washington
Facility ID No. 155139
File No. BMPFT-20160729ANA

Petition for Reconsideration

Community Public Radio, Inc., Assignor
Salem Media of Oregon, Inc., Assignee
File No. BAPFT-20160728AGJ

Petition to Deny

Dear Counsel:

The Media Bureau (Bureau) has before it: (1) Bustos Media Holdings, LLC's (Bustos) September 2, 2016, Petition for Reconsideration (Petition I) of the Bureau's grant of the previously uncontested application (Modification Application) of Salem Media of Oregon (Salem) for minor modification of the facilities of its unbuilt FM translator permit for Station K232FM, Eaglemount, Washington (Translator); (2) the referenced application (Assignment Application) for consent to assign the Translator's permit from Community Public Radio, Inc. (Community) to Salem (Assignment Application); (3) Bustos' September 2, 2016, Petition to Deny (Petition II) the Assignment Application; and (4) related responsive pleadings.¹ For the reasons discussed below, we grant Petition I, rescind the grant of the Modification Application and dismiss that application, and hold Petition II in abeyance along with the Assignment Application.

¹ Salem filed an Opposition to Petition for Reconsideration (Opposition I) on September 15, 2016, to which Bustos replied on September 27, 2016 (Reply I). Salem also filed an Opposition to Petition to Deny Assignment Application (Opposition II) on September 15, 2016 (resubmitted on October 4, 2016, to correct filing error). Bustos replied (Reply II) on September 27, 2016.

Background. The Translator is authorized to operate on Channel 276 (103.1 MHz) at Eaglemount, Washington, to rebroadcast noncommercial educational FM station KROH(FM), Port Townshend, Washington.² On July 28, 2016, Salem and Community filed the Assignment Application. On July 29, 2016, Salem filed the Modification Application during the authorized filing window for FM translator modification applications,³ seeking to relocate the Translator to Portland, Oregon, change its frequency to Channel 232 (94.3MHz), and operate as a “fill-in” translator for Salem’s commercial station KDZR(AM), Lake Oswego, Oregon. The staff released a *Public Notice* announcing the acceptance of Modification Application on August 3, 2016,⁴ and granted that application on August 26, 2016.⁵

In Petition I, Bustos argues that it was unable to object to the Modification Application prior to grant because public notice of the Modification Application was defective and inaccurate.⁶ Bustos claims that there was nothing in the August 3, 2016, public notice to alert Bustos of the proposal to move the Translator to Portland, Oregon,⁷ and that it was entitled to adequate notice because the Translator’s modified facilities will cause destructive interference to “substantial areas” where its co-channel station KZZR(FM), Government Camp, Oregon, can be heard.⁸ Bustos further claims that the failure to provide adequate notice deprived it of the opportunity to demonstrate that the Modification Application could not be granted because the interference would result in a modification of the KZZR(FM) license under Section 316(a) of the Communications Act of 1934, as amended (Act).⁹

In support of its claim that the facilities authorized in the modified permit will cause interference to the direct reception of station KZZR(FM) in violation of Section 74.1204(f) of the FCC’s rules (Rules),¹⁰ Bustos attaches statements, made under penalty of perjury, from 16 listeners of KZZR(FM) along with contour maps that identify the locations of these listeners within the 60 dBμ (1mV/m) signal proposed in the Modification Application, and calculations of the undesired-to-desired signal strength ratios (U/D ratios) at these locations with respect to the facilities authorized in the modified permit.¹¹ Bustos requests that we rescind our grant of the Modification Application.

² See Permit No. BNPFT-20130816ACA.

³ See *Media Bureau Announces Filing Dates and Procedures for AM Station Filing Window for FM Translator Modifications and Availability of FM Translator Technical Tools*, Public Notice, 30 FCC Rcd 14690-1 (MB 2015), (*FM Translator Modification Window Notice*); see also *Revitalization of the AM Radio Service*, Report and Order, Further Notice of Proposed Rulemaking, and Notice of Inquiry, 30 FCC Rcd 12145, 12150 para. 12 (2015), 81 Fed. Reg. 2751-01 (Jan. 19, 2016) (*AM Revitalization Order*) (AM licensee seeking to rebroadcast on an FM translator may acquire and relocate one and only one authorized non-reserved band FM translator station up to 250 miles).

⁴ See *Broadcast Applications*, Public Notice, Report No. 28790 (rel. Aug. 3, 2016), p. 62.

⁵ See *Broadcast Actions*, Public Notice, Report No. 48810 (rel. Aug. 31, 2016).

⁶ Petition I at 2; see also 47 CFR § 1.106(b)(1).

⁷ *Id.* at 3. Bustos notes that the public notice merely states: “[File No.] BMPFT-20160729ANA, K276FZ [now K232FM], [Fac. ID. No.] 155139, Community Public Radio, Inc., Mod of CP, E, 94.3MHz, WA, Eaglemount.”

⁸ Petition I at 3. Bustos also submits a map of the predicted KZZR(FM) signal, prepared using Longley-Rice methodology, showing that KZZR(FM) places a 70dBμ (3.16 mV/m) signal into the Portland Metro area, including areas within the Translator’s 60 dBμ (1 mV/m) contour. *Id.* at Exhibits F, G.

⁹ *Id.* at 4; see also 47 U.S.C. § 316(a).

¹⁰ Petition I at 5, citing 47 CFR § 74.1204(f).

¹¹ *Id.* at 6 and at Exhibits C, D, E and F.

In Opposition I, Salem argues that Bustos has not shown “good reason” for why it was unable to participate earlier in the proceeding,¹² as required by Section 1.106(b)(1) of the Rules.¹³ Specifically, Salem asserts that the Commission’s public notices have “never” provided the level of detail for FM translator changes such as community of license changes that Bustos is claiming is necessary for adequate notice and that CDBS provides the technical detail of all applications to the public for analysis at any time.¹⁴ Salem further argues that Section 316(a) of the Act¹⁵ does not extend special due process notice and opportunity for protest to licensees who simply anticipate a competitive impact and potential, but unconfirmed, interference from a new entrant into the market.¹⁶ Finally, Salem asserts that the Translator’s facilities comply with the contour overlap provisions of Section 74.1204(a) of the Rules¹⁷ with respect to all pertinent co-channel and first-adjacent channel assignments, authorizations and applications, including Bustos’ KZZR(FM).¹⁸ Salem also notes that dismissal of Petition I will not preclude Bustos from obtaining relief if the eventual operation of the Translator causes actual interference to KZZR(FM).¹⁹

In Reply I, Bustos argues that: (1) it has made a satisfactory Section 1.106(b)(1) showing and that the Commission has allowed petitions for reconsideration where the subject application was granted only a short period of time after public notice was given; (2) its interference showing is reason enough, pursuant to Section 1.106(c)(2) of the Rules,²⁰ that consideration of Petition I is in the “public interest”; and (3) Section 74.1204(f) governs this case, and Salem has submitted no engineering evidence to refute Bustos’ Longley-Rice showing that Bustos’ “KZZR has a strong signal over most of the Portland metropolitan area, including most of the areas within the K232FM proposed 60 dBμ contour.”²¹

Discussion. The Commission will consider a petition for reconsideration only when the petitioner shows either a material error in the Commission’s original order, or raises additional facts, not known or existing at the time of the petitioner’s last opportunity to present such matters.²² Although a petitioner who is not a party to the proceeding generally must state with particularity the manner in which its interests are adversely affected by the action taken and show good reason why it was not possible to participate in the earlier stages of the proceeding,²³ Section 1.106(c)(2) of the Rules permits the Bureau to consider a petition for reconsideration if it determines that “consideration of the facts or arguments relied on is required in the public interest.”²⁴

¹² Opposition I at 1.

¹³ 47 CFR §1.106(b)(1).

¹⁴ Opposition at 2.

¹⁵ 47 U.S.C. § 316(a).

¹⁶ Opposition at 3.

¹⁷ 47 CFR § 74.1204(a).

¹⁸ Opposition at 3; 47 CFR § 74.1204(a).

¹⁹ Opposition at 3.

²⁰ 47 CFR § 1.106(c)(2).

²¹ Reply I at 1-4.

²² See 47 CFR § 1.106(c), (d); see also *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 para. 3 (1964), *aff’d sub nom.*, *Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966).

²³ 47 CFR § 1.106(b)(1).

²⁴ 47 CFR § 1.106(c)(2).

In this case, we believe that considering Bustos' Petition I and its accompanying engineering exhibit is in the public interest. We note that this is a site change for an FM Translator involving a move of a considerable distance and that the issue of whether the translator's proposed site move would cause interference to listeners of Bustos' KZZR(FM) was raised in a timely petition for reconsideration. The filing procedures announced in the *AM Revitalization Order* where an FM translator station licensee may take advantage of a one-time 250-mile site change modification opportunity are unique, and review of the engineering exhibit included with Petition I would facilitate resolution of this case on a complete and more accurate record.²⁵ We therefore find that the public interest is better served in this unusual circumstance by giving the objecting station full opportunity to avail itself of the protections afforded by the Rules.²⁶

In order to provide convincing evidence under Section 74.1204(f) of the Rules that grant of a translator construction permit "will result in interference to the reception" of an existing full-service station, an opponent must provide, at a minimum: (1) the name and specific address of each listener for which it claims credit; (2) some demonstration that the address of each purported listener falls within the 60 dBμ contour of the proposed translator station;²⁷ (3) some evidence, such as a declaration from each of the claimed listeners, that the person listens to the full-service station at the specified location; and (4) evidence that grant of the authorization will result in interference to the reception of the "desired" station at that location. The "undesired-to-desired" (U/D) signal strength ratio methodology may be used to demonstrate the potential for interference under Section 74.1204(f).²⁸ Section 74.1204(f) also requires that the objector show that a specific U/D signal strength ratio is exceeded at the location of a *bona fide* listener of the "desired" station to establish that interference will result.

Here, Bustos has submitted documentation from listeners certifying that they are listeners of KZZR(FM) and that they live, work or travel within the 60 dBμ contour of proposed Translator. Because we find that Bustos' engineering exhibit has demonstrated that there are listeners within the proposed 60 dBμ contour of proposed Translator, we will rescind the grant of the Modification Application and dismiss it.

Assignment Application. Salem's proposed ownership and operation of the Translator as a fill-in translator for its station KDZR(AM) complies with the Commission's FM translator service rules²⁹ only if the facilities specified in the Modification Application are approved and constructed. Therefore, we will hold the Assignment Application and claims against it (in the form of Petition II and related pleadings) in abeyance pending final resolution of the Modification Application proceeding.

Conclusion/Actions. Accordingly, IT IS ORDERED, that the Petition for Reconsideration filed by Bustos Media Holdings, LLC, on September 2, 2016, seeking reconsideration of the grant of the Modification Application (File No. BMPFT-20160729ANA), IS GRANTED to the extent indicated.

IT IS FURTHER ORDERED, that the grant of the Modification Application (File No. BMPFT-20160729ANA) IS RESCINDED, and that application IS DISMISSED.

²⁵ See, e.g., *Nevada-Utah Conference of Seventh-Day Adventists*, Letter Order, 26 FCC Rcd 15135, 15137 (MB 2011) (considering additional evidence raised in a petition for reconsideration is in the public interest).

²⁶ See, e.g., *New York Telephone Co.*, Memorandum Opinion and Order on Reconsideration, 6 FCC Rcd 3303, 3304 para. 10 (1991), *aff'd sub nom. New York State Department of Law v. FCC*, 984 F.2d 1209 (D.C. Cir. 1993) (declining to dismiss a petition for reconsideration that did not satisfy the requirements of Section 1.106(b)(1) because the public interest would be best served by "exercising our discretion to address petitioners' claims . . .").

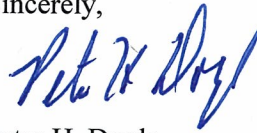
²⁷ The best method is to plot the specific addresses on a map depicting the translator station's 60 dBμ contour.

²⁸ See *Association for Community Education, Inc.*, 19 FCC Rcd 12682, 12687-88, para. 13 (2004).

²⁹ See, e.g., 47 CFR §§ 74.1231(b); 74.1232(d).

IT IS FURTHER ORDERED that, the application for consent to assign the construction permit of FM Translator Station K232FM, Eaglemount, Washington (File No. BAPFT-20160728AGJ), from Community Public Radio, Inc., to Salem Media of Oregon, Inc., and a petition to deny that application filed by Bustos Media Holdings, LLC, and related pleadings ARE HELD IN ABEYANCE pending final resolution of the Modification Application proceeding.

Sincerely,



Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Community Public Radio, Inc.